

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:)	
)	Order R1-2018-0024
)	
City of Ukiah Public Works Dept.)	SETTLEMENT AGREEMENT AND
Complaint No. R1-2017-0030 for)	STIPULATION FOR ENTRY OF
Administrative Civil Liability)	ADMINISTRATIVE CIVIL LIABILITY ORDER
)	
WDID No. 1B84029OMEN)	
NPDES Permit No. CA0022888)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the City of Ukiah (Discharger) (collectively Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulated Order is in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability (ACL) Complaint No. R1-2017-0030 (Complaint), dated June 7, 2017, to the Discharger.

Section II: Recitals

1. The Discharger owns and operates the Ukiah WWTP located at 300 Plant Road, Ukiah, California in Mendocino County. The WWTP serves 15,000 residential, commercial, and institutional users in the City of Ukiah and 5,000 residential users served by the Ukiah Valley Sanitation District. Disinfected, tertiary treated wastewater can be discharged to the Russian River, a water of the United States, as needed during winter months (October 1 to May 14). Year-round, disinfected secondary wastewater is discharged to percolation ponds adjacent to the Russian River. The Russian River is also a water of the state.
2. The Regional Water Board adopted WDRs Order No. R1-2012-0068, National Pollution Discharge Elimination System (NPDES) Permit No. CA0022888, on August 23, 2012, to regulate discharges from the WWTP which became effective on October 1, 2012.
3. The Regional Water Board adopted Cease and Desist Order (CDO) No. R1-2012-0069 on August 23, 2012, concurrently with WDRs Order No. R1-2012-0068, requiring the

DAVID M. NICHEN, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

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Discharger to take action and comply with effluent limitations. CDO No. R1-2012-0069 contains interim effluent limits for ammonia and nitrate, and includes a compliance schedule for the Discharger to comply with final effluent limits for ammonia and nitrate by August 1, 2017.

4. On June 7, 2017, the Prosecution Team issued the Complaint to the Discharger. The Complaint alleged the following:
 - a) The Discharger's self-monitoring reports showed three (3) effluent limit violations of WDRs Order No. R1-2012-0068 occurring on March 18, 27, and 31, 2015, which were not previously resolved by previously issued Settlement and Stipulation Administrative Civil Liability Order No. R1-2015-0069 covering violations which occurred during the period from February 1, 2012 to May 31, 2014. Of the three violations, one is subject to mandatory minimum penalties (MMPs) as a serious violation and two meet the interim effluent limits contained in CDO No. R1-2012-0069 and are exempt from penalties.
 - b) The Discharger's self-monitoring reports showed thirty-seven (37) effluent limit violations of WDRs Order No. R1-2012-0068 from June 1, 2015 (end of period included in Stipulation Order No. R1-2015-0069) to January 31, 2017, (Compliance Period), of which ten (10) are subject to MMPs as serious violations and twenty-seven (27) are exempt for meeting the CDO interim limits.
5. This Stipulated Order addresses eleven (11) violations that are subject to MMPs, as described in paragraph 4, above, and the corresponding total administrative civil liability amount assessed for the effluent violations is \$33,000.
6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. To resolve by consent and without further administrative proceedings all alleged violations of Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of thirty-three thousand dollars (\$33,000) in MMPs against the Discharger. The Parties have further agreed that the Discharger will apply all of these penalties toward the cost to complete a Supplemental Environmental Project (SEP), in accordance with the terms of this Stipulated Order.
7. The resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and meets the requirements under Water Code section 13385, subdivisions (h) and (i), and the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), so that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulated Order, and that this Order is in the best interest of the public.

8. Pursuant to Water Code section 13385, subdivision (l), the Regional Water Board may, in lieu of assessing a portion of MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), allow a publicly owned treatment works to spend a portion of MMPs towards the completion of an SEP proposed by the publicly owned treatment works. The SEP must conform to the requirements specified in the State Water Resources Control Board's (State Water Board) Enforcement Policy (Enforcement Policy), Section IX.
9. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010.
10. On January 4, 2018, the Director of the Office of Enforcement (OE Director) determined there was a compelling justification to allow the Discharger's proposed SEP in excess of 50% of an ACL. (See Attachment C) As a result of these findings, the Discharger is authorized to put the total amount of the ACL imposed under this Stipulated Order toward the proposed SEP.

Section III: Stipulations

The Parties stipulate to the following:

11. **Jurisdiction:** The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.
12. **Administrative Civil Liability:** The Discharger is subject to administrative civil liability in the amount of thirty-three thousand dollars (\$33,000) in MMPs. This entire amount will be suspended (suspended liability) pending completion of an SEP, as set forth herein and described in Attachment B and incorporated by this reference.
13. **SEP Description:** The proposed SEP will be carried out by the San Francisco Estuary Institute (SFEI), on behalf of the Discharger. The SEP is intended to support the City of Ukiah's Storm Water Resource Management and Habitat Protection and Restoration, and will be conducted in two phases. Under the first phase, SFEI will use its proprietary tool GreenPlan-IT, to support the development of a map of potential high priority green infrastructure (GI) project locations. SFEI will use the GreenPlan-IT's **Site Locator Tool** to identify and rank potential urban LID/GI project locations within the City of Ukiah based on priorities set by a project workgroup comprised of municipal separate storm water sewer systems (MS4) managers and other City departments as warranted. Under the second phase, SFEI will use its proprietary tool RipZET to help the City identify stream restoration opportunities.

14. **SEP Milestone Requirements:** The Discharger agrees that this Stipulated Order includes the Milestone Requirements set forth below and presented in Attachment B. The Discharger acknowledges that credit for completing any Milestone Requirement is dependent on the Regional Water Board's or its delegate's adoption of this Stipulated Order. The implementation schedule for completion of the SEP is as follows:

Milestone	Description	Completion Date
1	Hold project workgroup meeting to present the project to Ukiah managers and other stakeholders, identify relevant GIS datasets, and develop a list of local priorities (these are the Site Locator Tool's analysis parameters).	November 1, 2018
2	Submit first quarterly progress report, including meeting materials from the first meeting (e.g. agenda and presentation materials)	December 3, 2018
3	Hold second project workgroup meeting to present first run of the Site Locator Tool results and the results of the RipZET output.	February 15, 2019
4	Submit second quarterly progress report, including meeting materials from the second workgroup meeting, the RipSET memorandum, and GIS shape-file output.	March 1, 2019
5	Submit memorandum describing the Site Locator Tool methods, final input priorities (factors), and analysis results that includes a heat-map of ranked GI project locations and a list of those ranked locations.	May 1, 2019
6	Submit third quarterly progress report, including SFEI's final project report.	June 3, 2019
7	Submit Certification of Completion of SEP	July 15, 2019

15. **The Costs:** SFEI indicates that the project will cost \$33,000 to complete. The amount of the liability to be suspended upon completion of the SEP is \$33,000 in MMPs, as authorized by Water Code section 13385, subdivision (l), and the OE Director's Determination of Compelling Justification for City of Ukiah's Proposed Supplemental Environmental Project in Excess of Fifty Percent of Administrative Civil Liability. No additional liability above and beyond the \$33,000 shall be suspended for costs incurred to complete the SEP.

- 16. SEP Reports & Completion Date:** The SEP shall be concluded by May 15, 2019 (SEP Completion Date). The Discharger must submit quarterly reports to the Regional Water Board as shown in the table above. A final report certifying the completion of the SEP shall be provided to the Regional Water Board and the State Water Board's Division of Financial Assistance by July 15, 2019, as described in paragraph 21.
- 17. Failure to Complete the SEP:** Except as provided for in paragraph 24, if the SEP as described in this Order is determined to be infeasible, or if the Discharger fails to complete the SEP by the SEP Completion Date, the Regional Water Board will issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the State Water Pollution Cleanup and Abatement Account the Suspended Liability within 30 days of receipt of the NOV.
- 18. SEP Oversight:** The Discharger will oversee implementation of the SEP by SFEI on its behalf. Additional oversight will be provided by the Regional Water Board. The Discharger is solely responsible for paying all reasonable oversight costs incurred by the Regional Water Board to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to implement and complete the SEP. Reasonable oversight tasks to be performed by the Regional Water Board include but are not limited to, reviewing and evaluating progress, reviewing the final report, and verifying completion of the SEP.
- 19. Representation of the Discharger:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that it will use the funds to implement the project described in Paragraph 13 in accordance with the implementation schedule set forth in Paragraph 14. The Discharger understands that its obligation to implement the SEP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.
- 20. Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents and agrees that (1) it will implement and complete the SEP as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP identified in Paragraph 13 and Attachment B by remaining liable for the suspended liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Order. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

21. Certification of Completion of SEP: On or before July 15, 2019, the Discharger shall provide a certified statement of completion of the SEP (Certification). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification shall include the following:

- a. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include plans, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
- b. Certification documenting the expenditures by the Discharger during the completion period for the SEP. Expenditures may include, but are not limited to, payments to outside consultants, vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
- c. Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the Federal Clean Water Act, and the Porter-Cologne Act.

22. Third Party Financial Audit of SEP: At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

23. Failure to Expend the Entire Suspended Liability on the Approved SEP: In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$33,000 has been spent for the completed SEP, the Discharger shall pay the difference between the suspended liability of \$33,000 and the amount the Discharger can demonstrate was actually spent on the SEP, as administrative civil liability. The Discharger shall be liable to pay the State Water Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire SEP Amount was spent to complete the SEP.

- 24. Extension of the Implementation Schedule Deadlines:** If given written justification from the Discharger and the Regional Water Board staff determines that a delay in the SEP implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Designated Regional Water Board Representative before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide the Discharger a new implementation schedule in writing, which shall include the date the SEP will be completed (Revised SEP Completion Date).
- 25. Completion of the SEP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. Receipt of this letter shall terminate any further SEP obligations of the Discharger and result in the permanent suspension of liability.
- 26. Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
- 27. Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
- 28. No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

29. Party Contacts for Communications related to Stipulation/Order:

For the Regional Water Board:

Diana Henriouille
Water Resource Control Engineer
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Diana.Henriouille@waterboards.ca.gov
(707) 576-2350

For the Discharger:

Tim Eriksen
Director of Public Works,
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482
tericksen@cityofukiah.com

30. Attorney's Fees and Costs: Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

31. Public Notice: The Discharger understands that this Stipulated Order will be noticed for a 30-day public comment period prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Stipulation and Order as necessary or advisable under the circumstances. If the Regional Water Board Assistant Executive Officer or other Prosecution Team Staff receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Regional Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.

32. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

33. Interpretation: This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

34. Modification: This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its Executive Officer.

35. Integration: This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Order.

36. If Order Does Not Take Effect: In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

37. Waiver of Hearing: The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

38. Waiver of Right to Petition: The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California superior court and/or any California appellate level court.

39. Regional Water Board is Not Liable: Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order nor shall the Regional Water

Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.

40. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors, and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
41. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
42. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
43. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
44. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
45. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
46. **Effective Date:** This Stipulated Order is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**


Digitally signed by
Joshua Curtis
Date: 2018.04.30
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By: _____
Joshua Curtis
Assistant Executive Officer

City of Ukiah Public Works Department

Date: 4/19/18

By: _____


Tim Eriksen
Director of Public Works

Findings of the Regional Water Board:

IT IS HEREBY ORDERED:

47. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint and other effluent limit violations, the Discharger hereby agrees to comply with the terms and conditions of this Order.
48. The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.
49. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.
50. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

51. Fulfillment of the Discharger's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, North Coast Region.



Matthias St. John
Executive Officer

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Attachments: Attachment A Table of violations from Complaint
Attachment B SEP description
Attachment C Director of Office of Enforcement's Determination of
Compelling Justification for City of Ukiah's Proposed
Supplemental Environmental Project in Excess of Fifty
Percent of Administrative Civil Liability

Effluent Limitation Violations Requiring Mandatory Minimum Penalties

Violation Number	Violation Date	Pollutant Parameter	Permit Limit	Permit Period	Result/Average	Units	Exempted from MMP?	Exempt Reason or otherwise not subject to MMPs	% Over Limit	Date 180 Days Prior	Serious Violation?	No. of Effluent Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	10/21/16	Dichlorobromomethane	1.1	Daily Maximum	9.61	ug/L	No	b	773%	9/19/2016	Yes	Serious, CL2	Yes	13385(i)	\$ 3,000
2	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	11	mg/L	Yes	b	61%	9/28/2016	Exempt	N/A	No	13385(i)	\$ 0
3	10/27/17	Nitrate, Total (as N)	10	Monthly Average	26.6	mg/L	Yes	b	60%	10/2/2016	Exempt	N/A	No	13385(i)	\$ 0
4	10/27/17	Dichlorobromomethane	1.1	Daily Maximum	2.09	ug/L	No	b	90%	04/10/2015	Yes	Serious, CL1	Yes	13385(i)	\$ 3,000
5	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	11	mg/L	Yes	b	61%	04/10/2015	Exempt	N/A	No	13385(i)	\$ 0
6	10/27/17	Copper, Total	35	Monthly Average	41	ug/L	No	b	64%	04/10/2015	Yes	Serious, CL2	Yes	13385(i)	\$ 3,000
7	10/27/17	Dichlorobromomethane	0.56	Monthly Average	2.09	ug/L	No	b	273%	04/10/2015	Yes	Serious, CL3	Yes	13385(i)	\$ 3,000
8	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	7.9	mg/L	Yes	b	16%	4/3/2015	Exempt	N/A	No	13385(i)	\$ 0
9	10/27/17	Nitrate, Total (as N)	10	Monthly Average	12	mg/L	Yes	b	14%	3/4/2015	Exempt	N/A	No	13385(i)	\$ 0
10	10/27/17	Ammonia, Total (as N)	3.5	Monthly Average	14	mg/L	Yes	b	114%	3/4/2015	Exempt	N/A	No	13385(i)	\$ 0
11	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	41%	3/7/2015	Exempt	N/A	No	13385(i)	\$ 0
12	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	47%	3/7/2015	Exempt	N/A	No	13385(i)	\$ 0
13	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	47%	3/7/2015	Exempt	N/A	No	13385(i)	\$ 0
14	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	19%	3/7/2015	Exempt	N/A	No	13385(i)	\$ 0
15	10/27/17	Ammonia, Total (as N)	3.5	Monthly Average	14	mg/L	Yes	b	48%	3/7/2015	Exempt	N/A	No	13385(i)	\$ 0
16	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	11	mg/L	Yes	b	62%	08/04/2015	Exempt	N/A	No	13385(i)	\$ 0
17	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	9.1	mg/L	Yes	b	34%	08/11/2015	Exempt	N/A	No	13385(i)	\$ 0
18	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	8.1	mg/L	Yes	b	16%	08/18/2015	Exempt	N/A	No	13385(i)	\$ 0
19	10/27/17	Ammonia, Total (as N)	3.5	Monthly Average	14	mg/L	Yes	b	111%	07/04/2015	Exempt	N/A	No	13385(i)	\$ 0
20	10/27/17	Dichlorobromomethane	1.1	Daily Maximum	2.22	ug/L	No	b	102%	08/06/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
21	10/27/17	Dichlorobromomethane	0.56	Monthly Average	2.2	ug/L	No	b	283%	08/06/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
22	10/27/17	Dichlorobromomethane	1.1	Daily Maximum	2.45	ug/L	No	b	123%	08/03/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
23	10/27/17	Dichlorobromomethane	0.56	Monthly Average	1.1	lb/month	No	b	96%	08/03/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
24	10/27/17	Dichlorobromomethane	0.56	Monthly Average	1.1	ug/L	No	b	96%	10/09/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
25	10/27/17	Nitrate, Total (as N)	10	Monthly Average	26.6	mg/L	Yes	b	13%	10/09/2015	Exempt	N/A	No	13385(i)	\$ 0
26	10/27/17	Dichlorobromomethane	0.56	Monthly Average	9.83	ug/L	No	b	1673%	11/05/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
27	10/27/17	Dichlorobromomethane	1.1	Daily Maximum	9.95	ug/L	No	b	803%	11/05/2015	Yes	Serious, >CL3	Yes	13385(i)	\$ 3,000
28	10/27/17	Nitrate, Total (as N)	10	Monthly Average	26.6	mg/L	Yes	b	50%	12/29/2015	Exempt	N/A	No	13385(i)	\$ 0
29	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	36%	4/8/2016	Exempt	N/A	No	13385(i)	\$ 0
30	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	9.3	mg/L	Yes	b	61%	4/14/2016	Exempt	N/A	No	13385(i)	\$ 0
31	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	12%	4/21/2016	Exempt	N/A	No	13385(i)	\$ 0
32	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	39%	4/29/2016	Exempt	N/A	No	13385(i)	\$ 0
33	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	3.5	mg/L	Yes	b	188%	5/4/2016	Exempt	N/A	No	13385(i)	\$ 0
34	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	25%	5/12/2016	Exempt	N/A	No	13385(i)	\$ 0
35	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	6.8	mg/L	Yes	b	13%	5/12/2016	Exempt	N/A	No	13385(i)	\$ 0
36	10/27/17	Ammonia, Total (as N)	3.5	Monthly Average	14	mg/L	Yes	b	80%	8/3/2016	Exempt	N/A	No	13385(i)	\$ 0
37	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	20	mg/L	Yes	b	47%	6/9/2016	Exempt	N/A	No	13385(i)	\$ 0
38	10/27/17	Ammonia, Total (as N)	3.5	Monthly Average	14	mg/L	Yes	b	74%	7/4/2016	Exempt	N/A	No	13385(i)	\$ 0
39	10/27/17	Ammonia, Total (as N)	3.5	1-Hour Average	20	mg/L	Yes	b	111%	07/04/2016	Exempt	N/A	No	13385(i)	\$ 0
40	10/27/17	Ammonia, Total (as N)	6.8	Daily Maximum	7.2	mg/L	Yes	b	5%	7/7/2016	Exempt	N/A	No	13385(i)	\$ 0
Total Penalty:															\$ 33,000

Table Legend:

- The first three violations in a six (6) month period shall not receive MMP assessment unless it is serious.
- Compliance with CDO No. R1-2013-0069 interim effluent limitation.
- Count - Number of exceedances in the past 180 days, including this violation. A count >CL 3 means that a penalty under Water Code section 13385(i) applies.
- Effluent Violations unaddressed in ACL Order No. R1-2015-0069 previously issued by the Water Quality Control Board.

- Violation occurs on sample date or last date of averaging period.
- Limitation periods for the interim limits shown correspond, when possible, to permit limitation periods. For Ammonia, the CDO contains only monthly and daily interim limits.
- For Group I pollutants, a violation is serious when the limit is exceeded by more than 40%.
- For Group II pollutants, a violation is serious when the limit is exceeded by more than 20%.
- When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a penalty.

Violation period ending the last day of January 2017

Group I Violations Assessed MMP-0	
Group II Violations Assessed MMP-11	
Other Effluent Violations Assessed MMP-0	
Violations Exempt from MMP-30	
Total Violations Assessed MMP-11	
Mandatory Minimum Penalty = (11 Serious Violations + 0 Non-Serious Violations) x \$3,000 = \$33,000	

Science-based Decision Support Tools to Optimize Ukiah's Storm Water Resource Management and Habitat Protection and Restoration

SFEI-ASC Proposal

April,19, 2018

Introduction

SFEI-ASC has developed two, publically available, geospatially-based decision support tools that can help municipal separate storm sewer system (MS4) Permittees locate potential green infrastructure (GI) projects. One tool supports urban GI planning to benefit both ecological and community priorities identified by the user, while the other tool supports riparian habitat assessment and restoration planning. SFEI-ASC proposes to work with the City of Ukiah MS4 managers and other city departments to apply both tools in Ukiah to manage the storm water as a resource and to protect and restore habitats.

About the Tools

GreenPlan-IT

Green infrastructure has emerged as an integral aspect of multi-benefit, watershed approaches to address concerns about storm water quality and quantity in an urban environment. When carefully applied, GI features, such as rain gardens, tree-well planters, and permeable pavement, can be cost-effective, resilient ways to manage storm water at its source with measurable, cumulative environmental, and community benefits.

The GreenPlan-IT toolkit is a publically available, geospatial planning tool that optimizes municipal storm water management and GI planning by identifying, and ranking potential GI project locations based on their potential for achieving multiple ecological and/or community benefits (or other priorities defined by the user), and evaluating GI project effectiveness in reducing storm water runoff and pollutant loads at a watershed scale. The toolkit consists of four stand-alone tools (Figure 1) that, when combined (Figure 2), support watershed based regional GI project planning and tracking.

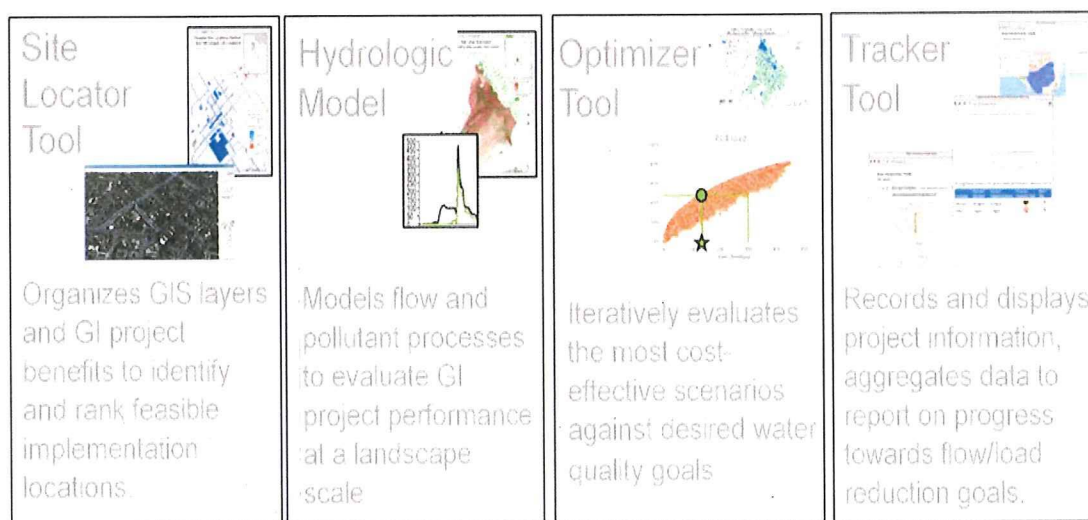


Figure 1. Four component tools of GreenPlan-IT.

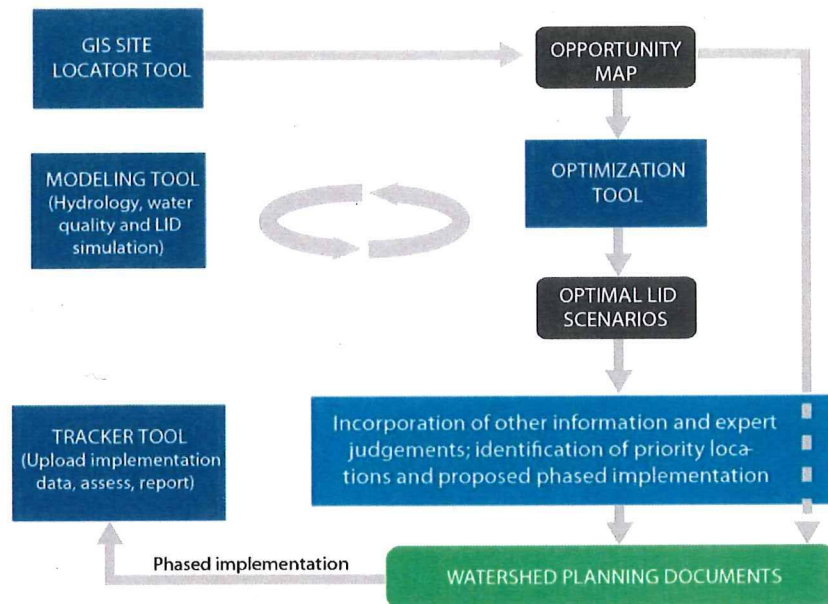


Figure 2. GreenPlan-IT flowchart depicting how the four tools relate to each other to support regional green infrastructure planning at a landscape scale.

GreenPlan-IT tools help address the following key storm water management questions:

- Where are the suitable locations for GI implementation?
- What areas have the greatest potential to reduce storm water runoff and pollutant loads?
- How much water quality and/or hydrologic improvements can be achieved with different kinds of GI installations vs. implementation cost within the planning region?

Riparian Zone Estimation Tool (RipZET)

Loss of riparian areas has affected water quality and habitat conditions and presented a number of challenges for resource managers and planners. Current approaches to restoring and protecting riparian areas focus on functions or ecological services, including stream shading, bank stabilization, organic material input, runoff filtration, floodwater storage, and groundwater recharge. Land use planners need tools to help visualize the extent of 'functional riparian width' as a means for ensuring appropriate riparian functions for stream reaches targeted for restoration and maintaining relatively undisturbed stream reaches targeted for development.

The Riparian Zone Estimation Tool (RipZET) is a geospatial, decision support tool that estimates the extent of riparian buffer along streams based the average height of mature riparian vegetation and steepness of hillslopes adjacent to the channel. RipZET's output is a GIS-shape file that represents riparian extents, which is summarized by functional riparian width-classes representing the relative proportions of ecological services provided within a watershed. Managers use RipZET to characterize riparian extents at a landscape scale, and identify areas of potentially poor ecological services that could be targeted for restoration.

Phased Approach

SFEI-ASC proposes a phased approach to support the City of Ukiah's Storm Water Resource Management and Habitat Protection and Restoration. The first phase would be to support the development of a map of potential high priority GI project locations. The GreenPlan-IT's **Site Locator Tool** will be employed to identify and rank potential urban LID/GI project locations within the City of Ukiah based on priorities set by a project workgroup comprised of MS4 managers and other City departments as warranted. In addition, SFEI-ASC will employ RipZET to support the identification of stream restoration opportunities.

Future phases would be to apply the other GreenPlan-IT tools to support watershed based storm water management and planning. This would include setting-up and calibrating the **hydrologic Model**, running the **Optimization tool** (based on the Site Locator and Model outputs), and implementing the project tracker tool. Modeling base-line hydrologic and pollutant loads in the watershed is required input for the Optimization Tool, which uses iterative calculations to estimate the effectiveness of proposed GI projects vs. cost in reducing storm water runoff and pollutant loads. Eventually, the **Tracker** could be used to track projects and evaluate the cumulative benefits of the implemented GI projects in reducing runoff and pollutant loads.

These future phases would be covered under a separate proposal. In the meantime, SFEI-ASC will coordinate with the City of Ukiah to identify existing hydrologic and pollutant-monitoring data and evaluate if those data could be used to calibrate the hydrologic Model for the City of Ukiah.

Phase 1 Scope of Work: Identifying Potential High Priority GI Sites (\$33,000)

SFEI Project Manager: Sarah Lowe (sarahl@sfei.org, 510-746-7384)

SFEI Key People: Pete Kauhanen (GIS Specialist, petek@sfei.org)
Lawrence Sim (GIS Specialist, lawrences@sfei.org)
Dr. Josh Collins (Principal Investigator, josh@sfei.org)

Project Period: July 15, 2018 – May 31, 2019

1. GreenPlan-IT Site Locator Tool (\$24,500) Months 1-10

The Geographic Information System (GIS) based Site Locator Tool is a planning tool that can be used to identify and rank potential GI project locations through GIS analysis. The Tool incorporates many regional, publicly available data layers and builds in several intersecting analyses that require user input data to produce maps of possible GI locations. These analyses are flexible, allowing the end-user the flexibility to add local data layers to better identify suitable locations and rankings of GI locations, to produce outputs of different levels of refinement, and to run the analyses with varying amounts of data. The Site Locator Tool can be fine-tuned iteratively as additional local data or data with better resolution become available. In addition, there are six GI feature types in the Tool: bio-retention basins, permeable pavement, green street features (such as vegetated swales and planter boxes), storm water wetlands, wet pond, and infiltration trench. Any combination or all GI feature types can be selected when running the Tool.

1.A. Site Locator Tool Workgroup (supports the tool set-up and interim product review)
SFEI-ASC will work with City of Ukiah MS4 managers and other departments (as warranted) to identify, compile, and prioritize relevant GIS datasets needed to run the GreenPlan-IT's Site Locator Tool and determine the GI feature types to include. Up to three workgroup meetings will be held (by web-conference and/or in-person) to support the development of the Site Locator Tool inputs, set the analysis parameters, and review the results. Additional coordination and data gathering efforts will be carried out via emails and phone calls.

Deliverables

- Workgroup meeting agendas, presentations, and meeting summaries (These will be submitted with the progress reports under item 3.)

1.B Run the GreenPlan-IT Site Locator Tool

SFEI-ASC will run the Site Locator Tool to identify and rank proposed GI project locations within the City of Ukiah based on the priorities identified by the Site Locator workgroup in Task 1 above. This includes the initial set-up and run and one additional run based on additional data or adjustments to the list of priorities and/or weights provided at the second the Site Locator Workgroup meeting. The final Tool output will be a GIS dataset of the ranked GI project locations that reflect the multi-benefit priorities developed through the workgroup process.

Deliverables

- Memorandum describing the Site Locator Tool methods, final input priorities, and results that include a heat-map of ranked GI project locations and a list of those ranked locations
- GIS shape file of the ranked GI project locations and associated meta data

2. RipZET – Estimate Riparian Buffer Widths (\$5,000) Months 4-8

SFEI-ASC will coordinate with the City of Ukiah's MS4 managers to define the study area extent for running RipZET. SFEI-ASC will compile available vegetation and topographic data and run RipZET 's vegetation and hillslope modules to generate GIS datasets representing riparian extents within the study area based on vegetation and hillslope processes. A summary memo will be developed to present the methods, outputs, and summary charts that characterize the relative amounts of riparian areas based on functional riparian width-classes.

Deliverables

- Memorandum describing RipZET methods and results, which include a map representing the modeled riparian extents and summary tables and charts characterizing the relative amounts of riparian areas based on functional riparian width-classes.
- GIS shape file of the ranked GI project locations and associated meta data

3. Project Management (\$3,500) Months 1-10

SFEI-ASC's project management tasks include internal project coordination and staffing, contract coordination internally and with clients, invoicing, and progress reports. Progress reports will summarize work completed during the invoicing period (and will be submitted per the schedule below) including any workgroup meetings held during the reporting period. Copies of meeting

agendas and presentation material will be attached to progress reports. The third and final project progress report will essentially be a final project report that describes work completed during the last reporting period as well as throughout the project period, including a summary of project expenditures.

Deliverables

- 3 Invoices and project progress reports

Table of Project Milestones and Estimated Schedule

Milestones & Deliverables	Description	Submission Date*
1	SFEI will coordinate with the City of Ukiah to hold the first workgroup meeting (via web-conference and/or in-person) to present the project overview, and begin to identify relevant GIS datasets, and develop a list of local priorities.	Meeting completed by (September 30, 2018)
2	The first progress report and invoice , covering work performed through October, will be submitted along with the meeting materials (e.g. agenda and presentation materials)	(November 30, 2018)
3	The second progress report and invoice , covering work performed through January, will be submitted along with meeting materials from the second workgroup meeting (a web-conference meeting held in January), and the RipZET memorandum and GIS-shape file output .	(February 20, 2019)
4	Site Locator Tool Memorandum & GIS-shape file output.	(April 10, 2019)
5	The third progress report will include the final project progress report , covering work completed throughout the project period, and the final invoice .	(May 20, 2019)

* These submission dates are 'not-to-exceed dates' when SFEI will submit items to the City of Ukiah, and assumes that the Project start date is July 15, 2018.

Director of Office of Enforcement's Determination of Compelling Justification for City of Ukiah's Proposed Supplemental Environmental Project in Excess of Fifty Percent of Administrative Civil Liability

WHEREAS; The City of Ukiah and the California Regional Water Quality Control Board, North Coast Region Prosecution Team (Prosecution Team) have proposed a Settlement Agreement and Stipulation for Entry of Order (Stipulated Order) to resolve alleged water quality violations by Ukiah; and

WHEREAS; The Stipulated Order includes a proposed Supplemental Environmental Project (SEP) whereby the San Francisco Estuary Institute (SFEI) will implement a project on behalf of the City of Ukiah to support the City's Storm Water Resource Management and Habitat Protection and Restoration, utilizing SFEI's GreenPlan-IT tool to support the development of a map of potential high priority green infrastructure project locations, and using the GreenPlan-IT's Site Locator Tool, identify and rank potential urban LID/GI project locations within the City of Ukiah based on the priorities set by a project workgroup of municipal separate storm water sewer systems (MS4) managers, after which SFEI will use the RipZET tool to help the City identify stream restoration opportunities; and

WHEREAS; Adoption of the Stipulated Order by the Executive Officer of the California Regional Water Quality Control Board, North Coast Region (North Coast Water Board), pursuant to his delegated authority, is contingent upon the Director of Office of Enforcement's determination of compelling justification for a SEP in excess of fifty percent of administrative civil liability (ACL), as required by the State Water Resources Control Board's Policy on Supplemental Environmental Projects (the SEP Policy); and

WHEREAS; The value of the proposed SEP exceeds fifty percent of the total proposed ACL under the Stipulated Order; and

WHEREAS; The SEP Policy governs the consideration and approval of SEPs by the State Water Resources Control Board (State Water Board) and California's Regional Water Quality Control Boards (Regional Water Boards) (collectively Water Boards); and

WHEREAS; The SEP Policy defines SEPs as projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger; and

WHEREAS; The SEP Policy provides that a SEP shall only consist of measures that go above and beyond the otherwise applicable legal obligations of a discharger; and

WHEREAS; Unless otherwise required by law, the SEP Policy requires any order imposing a SEP to state that, if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended ACL, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone; and

WHEREAS; The SEP Policy requires that a SEP must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State, including, but not limited to, by enhancing or creating pollution prevention or reduction, or by furthering compliance education and the development of educational materials; and

WHEREAS; The SEP Policy provides additional SEP criteria to be considered, including, but not limited to, whether the SEP is supported by other public agencies, public groups or persons affected by the violations, whether it directly benefits the area where the harm occurred, whether it can be the basis for leveraging other funding sources, whether the entity identified as responsible for completing the SEP has the institutional stability and capacity to complete the SEP, and whether the SEP proposal includes, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project; and

WHEREAS; The SEP Policy requires that there must be a nexus between the violation(s) and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP; and

WHEREAS; All orders that include a SEP must: (1) Include or reference a scope of work, including a budget; (2) require periodic reporting on the performance of the SEP by the discharger so that the Regional Water Boards are able to monitor the timely and successful completion of the SEP; (3) include a time schedule for implementation with single or multiple milestones and that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone; (4) contain or reference performance standards and identified measures or indicators of performance in the scope of work; (5) specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators; and (6) require that whenever the discharger, or any third party with whom the discharger contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Water Board enforcement action (collectively Procedural Requirements); and

WHEREAS; Unless otherwise permitted by statute, the SEP Policy provides that no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than fifty percent of the total adjusted monetary assessment against the discharger, absent compelling justification; and

WHEREAS; If a Regional Water Board proposes an order containing a SEP that exceeds fifty percent of the total adjusted monetary assessment, that Regional Water Board shall affirmatively notify the Director of Office of Enforcement of the State Water Board of that proposal; and

WHEREAS; Upon request from a Regional Water Board or the State Water Board, the Director of Office of Enforcement shall determine whether exceptional circumstances provide compelling justification for exceeding the SEP Policy's fifty percent limit of the total adjusted monetary assessment against the discharger on SEPs; and

WHEREAS; The North Coast Water Board has notified the Director of the Office of Enforcement of its proposal to approve a SEP in excess of fifty percent of the total adjusted monetary assessment proposed in the Stipulated Order.

THEREFORE; I have considered the project description, facts and information in the administrative record, and hereby make the following findings:

- 1) The SEP proposed by the City of Ukiah, which utilizes tools to locate potential green infrastructure projects to manage storm water as a resource and protect and restore habitats, is consistent with the SEP Policy because;

- a) There is a direct nexus between the location of the violations at the WWTP and the SEP, as both are within the city of Ukiah which consists of only 4.722 square miles.¹
 - b) The SEP will enhance beneficial uses by benefiting ecological and community priorities through green infrastructure planning and allow for Ukiah to manage storm water as a resource and protect and restore habitats.
 - c) Ukiah is not otherwise legally required to fund or implement any aspect of the proposed SEP.
 - d) The SEP goes above and beyond the otherwise applicable obligations of the discharger since the SEP does not relate to Ukiah's operational obligations of its WWTP.
 - e) The Stipulated Order specifically states that the monetary liabilities associated with the SEP are suspended pending completion of project milestones, and that if it is not fully implemented the North Coast Water Board will be entitled to recover the full amount of the suspended penalty less any liability amount permanently suspended or excused based on timely and successful completion of interim milestones.
 - f) The SEP furthers additional criteria the SEP Policy establishes because the San Francisco Estuary Institute, which has developed the tools and will work with City of Ukiah MS4 managers and city departments to implement the SEP, has the institutional stability and capacity to complete the SEP with the City of Ukiah; the SEP is structured in a phased approach with funding allocated by phase; and the SEP is limited in scope based on the funding allocated.
 - g) The SEP and Stipulated Order satisfy all of the SEP Policy's Procedural Requirements.
- 2) The SEP is consistent with and furthers the North Coast Water Board's policies and objectives for SEPs.
 - 3) Exceptional circumstances provide compelling justification for approving a SEP in excess of fifty percent of the total liability in this case because the SEP is located in and benefits a community that has a financial hardship. Under the revised draft SEP Policy dated November 14, 2017, the OE Director may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment after making evidence and/or policy-based findings that: (1) There is compelling justification to do so due to exceptional circumstances; or (2) In cases where the SEP is located in or benefits a Disadvantaged Community, an Environmental Justice Community, or a community that has a financial hardship, or where the SEP substantially furthers the human right to water. The City of Ukiah qualifies as a community with a financial hardship as it has an unemployment rate of

¹ U.S. Census Bureau information available at:

https://www2.census.gov/geo/docs/maps-data/data/gazetteer/2016_Gazetteer/2016_gaz_place_06.txt

13.1 percent, which meets the criteria of having an unemployment rate of 10 percent or greater. (See attached memo) Consistent with the new SEP Policy, and the policies of the State Water Board and the North Coast Board, it is appropriate to allow excess of fifty percent of the total liability to be expended on a SEP for the City of Ukiah.

Based on the foregoing unique and exceptional circumstances; the North Coast Water Board's request to approve Ukiah's proposed SEP in excess of fifty percent of the total proposed ACL for the violations alleged in the Stipulated Order is hereby; GRANTED

By:

David L. Bayne, for

Cris Carrigan, Director
Office of Enforcement
State Water Resources Control Board

Attachment – Financial Hardship Memo



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

TO: Diana Henrioulle
Senior Water Resource Control Engineer

FROM: Cecile Morris
Water Resource Control Engineer

DATE: October 2, 2017

SUBJECT: THE CITY OF UKIAH WASTEWATER TREATMENT FACILITY,
DETERMINATION OF ELIGIBILITY FOR COMPLIANCE PROJECT AS A
PUBLICLY OWNED TREATMENT WORK (POTW) SERVING A SMALL
COMMUNITY WITH A FINANCIAL HARDSHIP

Background and Summary

On June 7, 2017, the North Coast Regional Water Quality Control Board (Regional Board) issued Administrative Civil Liability (ACL) Complaint R1-2017-0030 (Complaint) to the City of Ukiah (Ukiah or Discharger) for discharges from the Ukiah Wastewater Treatment Facility (WWTF) in violation of provisions of law for which the Regional Board is required to impose mandatory minimum penalties (MMPs) pursuant to California Water Code (Water Code) section 13385, subdivisions (h) and (i). The Complaint alleges that the Discharger exceeded forty (40) effluent limitations set forth in Waste Discharge Requirements (WDRs) Order No. R1-2012-0068 (NPDES No. CA0022888). Of the total effluent violations, eleven are subject to mandatory minimum penalties and twenty-nine (29) violations are exempt for meeting the interim effluent limits contained in Cease and Desist Order No. R1-2012-0069. The total penalty amount assessed in the Complaint is \$33,000.

On July 5, 2017, the Discharger waived the 90-day hearing requirement and indicated that it intended to pay the total penalty amount and settle the matter. The Regional Board posted the waiver and compliant for public comments for a 30-day period ending on August 14, 2017. The Regional Water board received no public comments during this notice period.

Following the public comment period, Prosecution Team staff noted that while past penalty settlements with the Discharger have involved Supplemental Environmental Projects

and/or Enhanced Compliance Actions that allow only 50% of the assessed penalty be applied towards a Project, the Discharger may qualify to perform a Compliance Project that would allow 100% of the penalty to be applied towards a project. Accordingly, staff analyzed most recent available census data and, as discussed below, determined that the Discharger does meet the requirements to qualify as a POTW serving a small community with a financial hardship.

Analysis

The Discharger owns the WWTF, a publicly owned treatment works (POTW), located at 300 Treatment Plant Road, Ukiah, in Mendocino County. Water Code section 13385, subdivision (k), provides that the State or Regional Water Board may, contingent upon certain findings, require a POTW serving a small community to spend an amount of money equivalent to the MMP amount toward the completion of a compliance project proposed by the POTW, in lieu of paying the fine amount to the State Water Board's Cleanup and Abatement Account. Water Code section 13385, subdivision (k)(2), defines a POTW "serving a small community" as:

"[A] publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."

Determining whether a POTW is "serving a small community" entails two separate determinations, whether: (1) the POTW is either situated within a rural county or has a population of 10,000 or less; and (2) the POTW's service area has a "financial hardship."

1. Rural County/Population Cap

The Ukiah WWTF is a POTW located in Mendocino County serving the City of Ukiah, the Ukiah Valley Sanitation District and surrounding unincorporated areas. The population of the City of Ukiah is 15,936 people (American Fact Finder, U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates). However, the POTW serves the surrounding areas as well as Ukiah with a total population of 31,977 people (U.S. Census Bureau, American Fact Finder, 2015 American Community Survey 5-Year Estimates with block group data).

The State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy¹ (Enforcement Policy), defines a "rural county" as "a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA)

¹ A copy of the State Water Board's Water Quality Enforcement Policy is available at http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

with a rural-urban continuum code of four through nine.” According to the 2013 Rural Urban Continuum Codes file updated May 10, 2013,² Mendocino County has a rural-urban continuum code of **four** (Nonmetro – Urban population of 20,000 or more, adjacent to a metro area) and therefore, falls within the “rural county” classification. The Ukiah WWTF is a POTW located within a rural county and meets the first portion of the criteria, but must also meet the financial hardship criteria.

2. Financial Hardship

Consistent with Water Code section 13385, subdivision (k)(2), the Enforcement Policy, at page 24, defines “financial hardship” in terms of median household income (MHI), unemployment rate and poverty level. Specifically, the *Enforcement Policy* defines “financial hardship” as meaning that the community served by the POTW meets one of the following criteria:

- *Median household income⁴ for the community is less than 80 percent of the California median household income;*
- *The community has an unemployment rate⁵ of 10 percent or greater; or*
- *Twenty percent of the population is below the poverty level.⁶*

“Median household income,” “unemployment rate,” and “poverty level” of the population served by the POTW are based on the most recent U.S. Census block group⁷ data or a local survey approved by the Regional Water Board in consultation with the State Water Board.

⁴ **Median household income**[.] *The median income divides the income distribution into two equal groups, one having incomes above the median and the other having incomes below the median.*

⁵ **Unemployed**[.] *All civilians, 16 years and older, are classified as unemployed if they (1) were neither “at work” nor “with a job but not at work” during the reference week, (2) were actively looking for work during the last 4 weeks, and (3) were available to accept a job. Also included as unemployed are civilians who (1) did not work at all during the reference week, (2) were waiting to be called back to a job from which they had been laid off, and (3) were available for work except for temporary illness.*

⁶ **Poverty**[.] *Following the Office of Management and Budget’s Directive 14, the Census Bureau uses a set of income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being “below the poverty level.”*

⁷ **Block group**[.] *A subdivision of a census tract (or, prior to 2000, a block numbering area). A block group is the smallest geographic unit for which the Census Bureau tabulates sample data. A block group consists of all the blocks within a census tract beginning with the same number. Example: block group 3 consists of all blocks within a 2000 census tract numbering from 3000 to 3999. In 1990, block group 3 consisted of all blocks numbered from 301 to 399Z.”*

² <http://www.ers.usda.gov/data-products/rural-urban-continuum-codes.aspx>, accessed October 2, 2017.

The most recent available economic data are from the United States Census Bureau's ongoing American Community Survey (ACS) 5-Year Estimates. The Regional Board is currently relying on these data.

For smaller communities such as the City of Ukiah, ACS data are only available for 5-year estimates. The most recent available 5-year estimate with block group data is that for the 2015 ACS 5-Year Estimate. Based on the 5-year Appendices files, Table 1 (Attachment) summarizes and identifies providing the necessary information at the block group level, and their data.

The average unemployment rate for Ukiah is 13.1 %, which is more than 10%. Based on the Enforcement Policy's criteria and the most recent U.S. Census block group data, the community served by the Ukiah WWTF qualifies as a small community with a financial hardship.

If the Discharger believes that the U.S. Census data used in this determination do not accurately represent the population served by the City of Ukiah WWTF, the Enforcement Policy provides for the possibility of a local survey approved by the Regional Board in consultation with the State Water Board (p. 24) and a procedure by which the Owner may present an alternative justification to the Regional Board for designation as a "POTW serving a small community (p. 25)." Pursuant to the Enforcement Policy, the Regional Board must consult with the State Water Board when making such determinations.

Attachment – Table 1, Summary of ACS 5-year Estimate Data

cc: Susan Loscutoff
Office of Enforcement
State Water Resources Control Board

ATTACHMENT

Table 1
Summary of ACS 5-year Estimate Data
Determination of Eligibility for Compliance Project for the City of Ukiah WWTF

Table #	Ukiah Table Description	Tract 109 Block Groups 1-4 2015 5- year	Tract 113 Block Groups 1-3 2015 5- year	Tract 114 Block Groups 1-6 2015 5- year	Tract 115 Block Groups 1-5 2015 5- year	Tract 116 Block Groups 1-4 2015 5- year	Tract 117 Block Groups 1-5 2015 5- year	California 2015 5- year	Financial Hardship Criterion
B17017	Number Below Poverty Level, Income in the Past 12 Months (2015)	245/1579 15.5% below poverty level	636/1999 31.8% below poverty level	109/1676 6.5% below poverty level	617/2398 25.7% below poverty level	593/2271 26.1% below poverty level	104/1552 6.7% below poverty level	N/A	Avg. 18.7% 20% below poverty level <i>Criterion not met</i>
B19013	Median Household Income In The Past 12 Months (In 2015 Inflation- Adjusted Dollars)	\$48,698	\$38,643	\$67,400	\$42,032	\$23,922	\$83,283	\$61,818	Avg. \$50,663 MHI less than 80% of CA MHI 80% CA MHI = \$49,454 <i>Criterion not met</i>
B23025	Employment Status For The Population 16 Years And Over	2,431 in labor force. Of those, 2,212 employed. 9.0% unemployed	2,690 in labor force. Of those, 2,208 employed. 17.9% unemployed	2,127 in labor force. Of those, 1,966 employed. 7.6% unemployed	3,355 in labor force. Of those, 2,602 employed. 22.4% unemployed	2,550 in labor force. Of those, 2,118 employed. 16.9% unemployed	2,397 in labor force. Of those, 2,279 employed. 4.9% unemployed	N/A	Avg. 13.1% Unemployment rate 10% or greater <i>Criterion met</i>